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**TITLE 329 SOLID WASTE MANAGEMENT BOARD**

**FIRST NOTICE OF COMMENT PERIOD**

LSA Document #11-90

**DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING UPDATES AND CORRECTIONS TO THE HAZARDOUS WASTE MANAGEMENT RULES IN [329 IAC 3.1](#)**

**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to [329 IAC 3.1](#) concerning the following:

- Addition of 40 CFR 261 Appendix IX to describe hazardous wastes excluded from regulation under 40 CFR 261.20 and 40 CFR 261.22.
- Removal of the emission-comparable fuel exclusion.
- Amendment to the delisting exclusion in 40 CFR 261, Appendix IX for the American Steel Cord facility in Scottsburg, Indiana to reflect changes in ownership and name to Tokusen U.S.A., Inc.
- Removal of saccharin and its salts (waste code U202) from the lists of hazardous wastes and hazardous constituents.
- Technical corrections to the alternative requirements for hazardous waste determination and accumulation of unwanted materials at laboratories owned by colleges and universities and other eligible academic entities formally affiliated with colleges and universities.

IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

**CITATIONS AFFECTED:** [329 IAC 3.1-1-7](#); [329 IAC 3.1-5-2](#); [329 IAC 3.1-6-2](#); [329 IAC 3.1-12-2](#).

**AUTHORITY:** [IC 13-14-8](#); [IC 13-19-3-1](#); [IC 13-22-2-4](#).

**SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**

**Basic Purpose and Background**

This rule would make a number of changes to the Indiana hazardous waste management rules in [329 IAC 3.1](#) to incorporate changes promulgated by the U.S. Environmental Protection Agency (EPA) since July 1, 2008, as follows:

- In the 1995 Hazardous Waste Annual Update (LSA Document #96-25, at 19 IR 3355), a provision was added to [329 IAC 3.1-6-2](#) to delete 40 CFR 261, Appendix IX. The practice under the Indiana law existing at the time was for IDEM to recognize federal delistings as they occurred, rather than incorporate those delistings by reference. Public Law 45-1997 and Public Law 128-1997 required the solid waste management board to adopt rules to remove a hazardous waste from regulation if it no longer meets the criteria for a hazardous waste. Those rules were added at [329 IAC 3.1-5-2](#) and [329 IAC 3.1-5-3](#) in the 1997 Hazardous Waste Annual Update by LSA Document #97-300 (21 IR 2740). Since the delisting provisions were added, IDEM has found that the deletion of 40 CFR 261, Appendix IX results in insufficient recognition of delistings granted by the EPA that are effective in Indiana and has determined that the appropriate way to recognize those delistings is by incorporating 40 CFR 261, Appendix IX by reference. This rule would incorporate by reference 40 CFR 261, Appendix IX by removing the provision at [329 IAC 3.1-6-2](#)(7) deleting the appendix. Since 40 CFR 261, Appendix IX is promulgated by the EPA, there are no other options available to accomplish the purpose of this rulemaking.
- In addition to the changes described above, this rule would add a provision in [329 IAC 3.1-5-2](#) to explain the effect of the EPA delistings included in 40 CFR 261, Appendix IX. This provision does not affect the status of federal delistings described in Appendix IX.
- On June 15, 2010, the EPA withdrew the emission-comparable fuel exclusion (75 FR 33712) that was promulgated on December 19, 2008 (73 FR 77954). This exclusion was not included in the July 1, 2008 edition of the Code of Federal Regulations incorporated by reference in [329 IAC 3.1-1-7](#). However, the June 15, 2010, rule made changes to the 2008 exclusion language that appeared in the July 1, 2008, edition of 40 CFR 261.38. To ensure that Indiana rules are equivalent to the corresponding federal rules, as required by RCRA Section 3006 (42 U.S.C. 6926) and 40 CFR 271, this rulemaking incorporates the changes made with that withdrawal.
- On September 22, 2010, the EPA published a final rule that replaced the delisting provisions for American Steel Cord in Scottsburg, Indiana (75 FR 57686) with a new delisting for Tokusen U.S.A., Inc., its successor, with updated delisting requirements. This action incorporates that change.
- On December 17, 2010, the EPA removed saccharin and its salts (waste code U202: 1,2-benzisothiazol-3(2H)-one, 1,1-dioxide and its salts) from the lists of hazardous constituents and

hazardous wastes (75 FR 78918). This rulemaking incorporates that removal.

- On December 20, 2010, the EPA made technical corrections to the alternative requirements for hazardous waste determination and accumulation of unwanted materials at laboratories owned by colleges and universities and other eligible academic entities formally affiliated with colleges and universities promulgated on December 1, 2008 (73 FR 72912). This rulemaking adopts those technical corrections.
- This rule also removes an obsolete provision in [329 IAC 3.1-6-2](#)(17) that expired on July 1, 2005.

### **Alternatives to Be Considered Within the Rulemaking**

#### **Alternative 1.**

Addition of 40 CFR 261 Appendix IX to describe hazardous wastes excluded from regulation under 40 CFR 261.20 and 40 CFR 261.22.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes.
- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is imposed by federal law.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

#### **Alternative 2.**

Changes to 40 CFR 261.38 resulting from removal of the emission comparable fuel exclusion.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes.
- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is imposed by federal law.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

#### **Alternative 3.**

Addition of a new delisting entry for Tokusen U.S.A., Inc., Scottsburg, Indiana, in 40 CFR 261, Appendix IX.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes.
- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is imposed by federal law.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

#### **Alternative 4.**

Removal of saccharin and its salts (waste code U202) from the lists of hazardous wastes and hazardous constituents.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes.
- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is imposed by federal law.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

#### **Alternative 5.**

Technical corrections to the alternative requirements for hazardous waste determination and accumulation of unwanted materials at laboratories owned by colleges and universities and other eligible academic entities formally affiliated with colleges and universities.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes.
- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is imposed by federal law.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

### **Applicable Federal Law**

RCRA Subchapter III (42 USC 6921 et seq.) establishes national requirements for hazardous waste management.

40 CFR 260 through 40 CFR 282 establish national standards for hazardous waste management.

RCRA Section 3006 (42 U.S.C. 6926) and 40 CFR 271 establish standards for state hazardous waste programs that are authorized by the EPA to operate in lieu of the federal hazardous waste program.

### **Potential Fiscal Impact**

Potential Fiscal Impact of Alternative 1: This alternative will have no fiscal impact on regulated entities. Incorporating Appendix IX does not change the status of any federal delisting. It simply clarifies the status of those delistings.

Potential Fiscal Impact of Alternative 2: This alternative will have no fiscal impact on regulated entities. The EPA cited a potential savings for regulated entities in Indiana of \$132,000. However, the exclusion that would have produced that potential savings was never adopted in Indiana. IDEM anticipates that adopting the amended provisions in 40 CFR 261.38 will have no quantifiable fiscal impact to the regulated entities involved.

Potential Fiscal Impact of Alternative 3: This alternative will have no fiscal impact on the Tokusen, U.S.A.

facility, since the federal delisting is already in effect. This alternative does not change the federal delisting: it only recognizes it.

Potential Fiscal Impact of Alternative 4: In 2009, the latest year for which complete records are available, eight generators made 51 shipments of U202 waste. This alternative will result in a cost savings to these generators due to reduced handling costs and the lower cost of disposal in a solid waste landfill under [329 IAC 10](#) instead of management in a hazardous waste treatment, storage or disposal facility under the hazardous waste rules in [329 IAC 3.1](#); however, that cost savings cannot be meaningfully quantified at this time. The EPA did not publish economic impact data on this action.

Potential Fiscal Impact of Alternative 5: This alternative will potentially have a limited cost savings to regulated entities but the entities that would take advantage of those corrections are not known at this time and therefore that cost savings cannot be meaningfully quantified at this time. However, this cost savings is not anticipated to be significant.

#### **Small Business Assistance Information**

IDEM established a compliance and technical assistance (CTAP) program under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at:

[www.in.gov/idem/ctap](http://www.in.gov/idem/ctap)

For purposes of [IC 4-22-2-28.1](#), the Small Business Regulatory Coordinator for this rule is:

Alison Beumer  
IDEM Small Business Regulatory Coordinator  
MC 60-04 IGCS W041  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 232-8172 or (800) 988-7901  
[ctap@idem.in.gov](mailto:ctap@idem.in.gov)

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-5](#) is:

Ryan Asberry  
Indiana Economic Development Corporation  
One North Capitol, Suite 700  
Indianapolis, IN 46204  
(317) 232-8962  
[smallbizombudsman@iedc.in.gov](mailto:smallbizombudsman@iedc.in.gov)

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-5](#), specifically [IC 5-28-17-5\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Brad Baughn  
IDEM Small Business Assistance Program Ombudsman  
MC 50-01 IGCN 1301  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 234-3386 or (800) 451-6027  
[bbaughn@idem.in.gov](mailto:bbaughn@idem.in.gov)

#### **Public Participation and Workgroup Information**

No workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Steve Mojonniere, Rules Development Branch, Office of Legal Counsel at (317) 233-1655 or (800) 451-6021 (in Indiana).

#### **STATUTORY AND REGULATORY REQUIREMENTS**

[IC 13-14-8-4](#) requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.

- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

#### **REQUEST FOR PUBLIC COMMENTS**

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

LSA Doc. #11-90 (2011 Hazardous Waste Update)  
Janet Pittman  
Rules Development Branch  
Office of Legal Counsel  
Indiana Department of Environmental Management  
100 North Senate Avenue MC 65-45  
Indianapolis, IN 46204-2251

Hand delivered comments will be accepted by the receptionist on duty at the thirteenth floor east reception desk, Office of Legal Counsel, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-5970, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Development Branch at (317) 232-8922 or (317) 233-8903.

#### **COMMENT PERIOD DEADLINE**

Comments must be postmarked, faxed, or hand delivered by April 1, 2011.

Additional information regarding this action may be obtained from Steve Mojonier, Rules Development Branch, Office of Legal Counsel, (317) 233-1655 or (800) 451-6027 (in Indiana).

*Posted: 03/02/2011 by Legislative Services Agency*

An [html](#) version of this document.